



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-979]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results of Antidumping Duty Administrative Review; Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On May 5, 2021, the United States Court of International Trade (the Court) issued its final judgment in *Risen Energy Co., Ltd. et al. v. United States*, Consol. Court No. 19-00153, sustaining the Department of Commerce (Commerce)'s first remand redetermination pertaining to the 2016-2017 antidumping duty (AD) administrative review of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (China). Commerce is notifying the public that the Court's final judgment in this litigation is not in harmony with Commerce's final results in the 2016-2017 AD administrative review of solar cells from China, and that Commerce is amending the final results with respect to the mandatory respondent Risen Energy Co., Ltd. (Risen) and three non-individually examined companies.

DATES: Applicable May 15, 2021.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-2769.

SUPPLEMENTARY INFORMATION:

[Background](#)

On July 30, 2019, Commerce published its *Final Results* of the 2016-2017 AD administrative review of solar cells from China.¹ Risen appealed Commerce's *Final Results*. On October 30, 2020, the Court remanded Commerce's *Final Results* for Commerce to reconsider or further explain its application of partial adverse facts available (AFA) in valuing unreported factors of production (FOPs) for merchandise sourced from Risen's unaffiliated suppliers, which were necessary for calculating Risen's² dumping margin.³

In its Remand Redetermination, pursuant to the Court's holding in *Risen I*, Commerce determined, under respectful protest, to base Risen's unreported FOP consumption on partial facts available rather than partial AFA.⁴ Specifically, Commerce based the unreported FOP consumption on the average of the consumption that was reported for certain of Risen's FOPs.⁵ Commerce assigned the margin calculated for Risen to those respondents eligible for a separate rate and which participated in the litigation.⁶ On May 5, 2021, the Court sustained Commerce's Remand Redetermination.⁷

Timken Notice

In its decision in *Timken*,⁸ as clarified by *Diamond Sawblades*,⁹ the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive"

¹ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016–2017*, 84 FR 36886 (July 30, 2019) (*AR5 Final Results*), and accompanying Issues and Decision Memorandum.

² Commerce has treated the following seven companies as a single entity: Risen Energy Co., Ltd.; Risen (Wuhai) New Energy Co., Ltd.; Zhejiang Twinsel Electronic Technology Co., Ltd.; Risen (Luoyang) New Energy Co., Ltd.; Jiujiang Shengchao Xinye Technology Co., Ltd.; Jiujiang Shengzhao Xinye Trade Co., Ltd. Ruichang Branch; and Risen Energy (Hong Kong) Co., Ltd. (collectively, Risen). See *AR5 Final Results*.

³ See *Risen Energy Co., Ltd., et al. v. United States*, 477 F. Supp. 3d 1331 (CIT 2020) (*Risen I*).

⁴ See *Final Results of Redetermination Pursuant to Court Order, Risen Energy Co., Ltd. et al. v. United States*, Consol. Court No. 19-00153, Slip Op. 20-152 (February 10, 2021) at 4.

⁵ *Id.* at 6.

⁶ *Id.* at 7-8.

⁷ See *Risen Energy Co., Ltd., et al. v. United States, et al.*, Consol. Court No. 19-00153, Slip Op. 21-55 (Ct. Int'l Trade May 5, 2021).

⁸ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

⁹ See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

court decision. The Court's May 5, 2021, judgment constitutes a final decision of the Court that is not in harmony with Commerce's *Final Results*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Results

Because there is now a final court decision, Commerce is amending its *Final Results*. The amended weighted-average dumping margin for the respondents which participated in this litigation is as follows:

Exporter	Weighted-Average Dumping Margin (percent)
Risen Energy Co., Ltd./Risen (Wuhai) New Energy Co., Ltd./Zhejiang Twinsel Electronic Technology Co., Ltd./Risen (Luoyang) New Energy Co., Ltd./Jiujiang Shengchao Xinye Technology Co., Ltd./Jiujiang Shengzhao Xinye Trade Co., Ltd. Ruichang Branch/Risen Energy (Hong Kong) Co., Ltd.	3.63
Canadian Solar International Limited/ Canadian Solar Manufacturing (Changshu), Inc./Canadian Solar Manufacturing (Luoyang), Inc./CSI Cells Co., Ltd./CSI-GCL Solar Manufacturing (YanCheng) Co., Ltd./CSI Solar Power (China) Inc.	3.30
Shanghai BYD Co., Ltd.	3.30
Yingli Energy (China) Company Limited/Baoding Tianwei Yingli New Energy Resources Co., Ltd./Tianjin Yingli New Energy Resources Co., Ltd./Hengshui Yingli New Energy Resources Co., Ltd./Lixian Yingli New Energy Resources Co., Ltd./Baoding Jiasheng Photovoltaic Technology Co., Ltd./Beijing Tianneng Yingli New Energy Resources Co., Ltd./Hainan Yingli New Energy Resources Co., Ltd./ Shenzhen Yingli New Energy Resources Co., Ltd.	3.30

Because the cash deposit rates for all of the respondents listed above have a superseding cash deposit rate, *i.e.*, there have been final results published in a subsequent administrative review, this notice does not affect the current cash deposit rates of these respondents and we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP).

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that: were exported by all of the respondents listed above and were entered, or withdrawn from

warehouse, for consumption during the period December 1, 2016, through November 30, 2017.

These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the Court's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise exported by all of the respondents listed above in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis*. Where an import-specific *ad valorem* assessment rate is zero or *de minimis*,¹⁰ we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: May 12, 2021.

Christian Marsh,
Acting Assistant Secretary for Enforcement and Compliance.s

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¹⁰ See 19 CFR 351.106(c)(2).